

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT
MERRIMACK COUNTY

I, Catherine Ruffle, Clerk of the Superior Court of the State of New Hampshire for the County of Merrimack, the same being a court of record having a seal, and having custody of the records of the said Superior Court, do hereby certify that the attached are true copies of Complaint /Removal from the New Hampshire Commission for Human Rights, Charge of Discrimination, and Notice of Filing of Notice of Removal in the action 217-2021-CV-00627Immaculee Muhizi v. B-X Concord, LLC d/b/a The Birches at Concord of said Superior Court.

In witness whereof I have hereunto set my hand
and affixed the seal of said Superior Court at
this 15th day of November A.D. 2021



Catherine J. Ruffle

Clerk of Superior Court

MERRIMACK, SS. THE STATE OF NEW HAMPSHIRE 217-2021-cv-00627 SUPERIOR COURT

Immaculee Muhizi
15 Hillcrest Road
Goffstown, NH 03045

v.

B-X Concord, LLC d/b/a The Birches at Concord
300 Pleasant Street
Concord, NH 03301

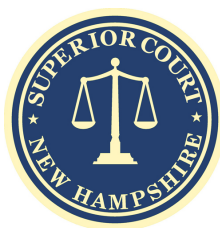
NOTICE OF FILING OF NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§1441 and 1446, Defendant, B-X CONCORD, LLC d/b/a THE BIRCHES AT CONCORD, by and through its attorneys, JACKSON LEWIS P.C., have this day filed in the Clerk's office of the United States District Court for the District of New Hampshire, Concord, New Hampshire, a Notice of Removal of this case, as shown by copy attached, and in accordance with the above statute, the State Court proceedings should proceed no further herein, unless and until the case is remanded.

Respectfully Submitted,
B-X CONCORD, LLC d/b/a
THE BIRCHES AT CONCORD,
By its attorneys,
JACKSON LEWIS P.C.,

Date: November 15, 2021

By: /s/ Martha Van Oot
Martha Van Oot, NHBA #963
100 International Drive, Suite 363
Portsmouth, NH 03801
603.559.2700
Martha.vanoot@jacksonlewis.com



True Copy Attest

Catherine J. Ruffle

Catherine J. Ruffle, Clerk of Court

November 15, 2021

Certificate of Service

I hereby certify that copies of the foregoing were this day served, via email and the court's electronic filing system, on *pro se* Plaintiff, Immaculee Muhizi, immaculeemu2004@yahoo.com.

Date: November 15, 2021

/s/ Martha Van Oot

Martha Van Oot

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Immaculee Muhizi,

Plaintiff

v.

Civil Case No. 1:21-cv-_____

B-X Concord, LLC

d/b/a

The Birches at Concord,

Defendant.

NOTICE OF REMOVAL
AND DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§1441 B-X CONCORD, LLC d/b/a THE BIRCHES AT CONCORD, by and through its attorneys, JACKSON LEWIS P.C., hereby removes this action from the Superior Court of the State of New Hampshire, Merrimack County, to the United States District Court for the District of New Hampshire.

In support of this Notice of Removal, Defendant states as follows:

1. On or about, March 28, 2018, Immaculee Muhizi dual-filed a Charge of Discrimination with the New Hampshire Commission for Human Rights (“NHCHR”) (Charge No. EDCR NO(R) 0158-18) and the Equal Employment Opportunity Commission (“EEOC”) (Charge No. 16D-2018-00185) against B-X Concord, LLC d/b/a The Birches at Concord. A copy of Plaintiff’s Charge of Discrimination is appended hereto as Exhibit 1.

2. By letter sent by email to Defendant on October 7, 2021, the NHCHR issued a finding of probable cause and scheduled a public hearing to be held on January 19, 2022, under the authority of NH RSA 354-A:21, on the following issues:

- a) Whether Complainant was subjected to race discrimination in violation of NH RSA 354-A, et seq.?

- b) Whether Complainant was subjected to color discrimination in violation of NH RSA 354-A?
- c) Whether Complainant was subjected to national origin discrimination in violation of NH RSA 354-A, et seq.?
- d) Whether Complainant was subjected to retaliation by Respondent in violation of NH RSA 354-A, et seq.?

3. Pursuant to NH RSA 354-A:21-a, on November 5, 2021, Defendant transferred the Charge to the Merrimack County Superior Court for a trial by jury. A copy of Defendant's Notice of Transfer to Superior Court and Request for Jury Trial Pursuant to NH RSA 354-A:21-A and Summons are attached hereto as Exhibit 2. A certified copy of the state court record will be filed upon receipt of same from the Merrimack County Superior Court.

4. Pursuant to 28 U.S.C. § 1446(a), this notice of removal is timely filed within thirty (30) days of November 5, 2021, the date on which Defendant transferred the matter to the Merrimack County Superior Court.

5. This Court has original jurisdiction over this action by virtue of federal question jurisdiction pursuant to 28 U.S.C. §1331. Specifically, Plaintiff alleges discrimination on the basis of race and national origin in violation of Title VII of the Civil Rights Act of 1964, and retaliation due to her requests for reasonable accommodation for her alleged disability in violation of the Americans with Disabilities Act of 1990 ("ADA") and the Americans with Disabilities Act Amendments Act ("ADAAA"), 42 U.S.C. § 12101, et seq., as well as under state law, NH RSA 354-A, et seq.

6. Defendant submits this Notice without waiving any defenses to the claims asserted by Plaintiff or conceding that Plaintiff has pled claims upon which relief can be granted.

7. As this action could have been commenced in this Court, removal is proper. 28 U.S.C. §1441(a). Furthermore, this Court may exercise supplemental jurisdiction over the Plaintiff's state law claims. See 28 U.S.C. §1367(a).

Respectfully Submitted,
B-X CONCORD, LLC d/b/a
THE BIRCHES AT CONCORD,
By its attorneys,
JACKSON LEWIS P.C.,

Date: November 15, 2021

By: /s/ Martha Van Oot
Martha Van Oot, NHBA #963
100 International Drive, Suite 363
Portsmouth, NH 03801
603.559.2700
Martha.vanoot@jacksonlewis.com

Certificate of Service

I hereby certify that copies of the foregoing were this day served, via email and the court's electronic filing system, on *pro se* Plaintiff, Immaculee Muhizi, immaculeemu2004@yahoo.com.

Date: November 15, 2021

/s/ Martha Van Oot
Martha Van Oot

MERRIMACK, SS. THE STATE OF NEW HAMPSHIRE SUPERIOR COURT

Immaculee Muhizi
15 Hillcrest Road
Goffstown, NH 03045

v.

B-X Concord, LLC d/b/a The Birches at Concord
300 Pleasant Street
Concord, NH 03301

**NOTICE OF REMOVAL FROM THE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS
AND REQUEST FOR JURY TRIAL PURSUANT TO NH RSA 354-A:21-A**

Defendant, B-X CONCORD, LLC d/b/a THE BIRCHES AT CONCORD, by and through its attorneys, JACKSON LEWIS P.C., hereby gives notice of its intent to remove Plaintiff's Charge of Discrimination to the Merrimack County Superior Court pursuant to the provisions of NH RSA 354-A:21-a, for the following reasons:

1. On or about, March 28, 2018, Immaculee Muhizi dual-filed a Charge of Discrimination with the New Hampshire Commission for Human Rights ("NHCHR") (Charge No. EDCRNO(R) 0158-18) and the Equal Employment Opportunity Commission ("EEOC") (Charge No. 16D-2018-00185) against B-X Concord, LLC d/b/a The Birches at Concord. A copy of Plaintiff's Charge of Discrimination is appended hereto as Exhibit 1.

2. By letter sent by email to Defendant on October 7, 2021, the NHCHR issued a finding of probable cause and scheduled a public hearing to be held on January 19, 2022, under the authority of NH RSA 354-A:21, on the following issues:

- a) Whether Complainant was subjected to race discrimination in violation of NH RSA 354-A, et seq.?
 - b) Whether Complainant was subjected to color discrimination in violation of NH RSA 354-A?
 - c) Whether Complainant was subjected to national origin discrimination in violation of NH RSA 354-A, et seq.?
 - d) Whether Complainant was subjected to retaliation by Respondent in violation of NH RSA 354-A, et seq.?
3. Defendant denies Plaintiff's claims in their entirety.
 4. Defendant wishes to exercise its right to a jury trial in this Court pursuant to the provisions of NH RSA 354-A:21.
 5. A copy of this Notice has been provided to Plaintiff and to the New Hampshire Commission for Human Rights.

Respectfully Submitted,
B-X CONCORD, LLC d/b/a
THE BIRCHES AT CONCORD,
By its attorneys,
JACKSON LEWIS P.C.,

Date: November 5, 2021

By: /s/ Martha Van Oot
Martha Van Oot, NHBA #963
100 International Drive, Suite 363
Portsmouth, NH 03801
603.559.2700
Martha.vanoot@jacksonlewis.com

Certificate of Service

I hereby certify that copies of the foregoing were this day served via email and first-class mail on:

Immaculee Muhizi, *pro se*
15 Hillcrest Road
Goffstown, NH 03045
Immaculeemu2004@yahoo.com

Sarah E. Burke Cohen, Esq.
Assistant Director
N.H. Commission for Human Rights
2 Industrial Park Drive
Concord, NH 03301
Sarah.E.Burkecohen@hrc.nh.gov

Date: November 5, 2021

/s/ Martha Van Oot

Martha Van Oot

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: Agency(ies) Charge No(s): <input checked="" type="checkbox"/> FEPA EDCRNO(R) 0158-18 <input checked="" type="checkbox"/> EEOC 16D-2018-00185	
New Hampshire Commission for Human Rights and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) Immaculee Muhizi		Home Phone (Incl. Area Code) (603) 384-1858	
Street Address 15 Hillcrest Road, Goffstown, NH 03045		RECEIVED MAR 28 2018	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.) <div style="text-align: right;">NH COMMISSION FOR HUMAN RIGHTS</div>			
Name B-X CONCORD, LLC D/B/A THE BIRCHES AT CONCORD		No. Employees, Members Phone No. (Include Area Code) 15 - 100 (603) 224-9111	
Street Address 300 Pleasant Street, Concord, NH 03301		City, State and ZIP Code	
Name B-X Concord, LLC		No. Employees, Members Phone No. (Include Area Code) 500 or More	
Street Address 4500 Dorr Street, Toledo, OH 43615		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input checked="" type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input checked="" type="checkbox"/> OTHER (Specify) RSA 354-A		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 02-01-2016 03-15-2018 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <ol style="list-style-type: none"> 1. I identify as African-American. My national origin is Rwandan. I speak English with an accent. 2. I was hired by B-X Concord, LLC d/b/a The Birches Concord in February 2015 as a full-time LPN. 3. I performed my job adequately. 4. During my time at the Birches, I was treated differently due to my race and national origin. 5. I received a lower hourly rate than other white LPNs, who have similar education and experiential backgrounds. 6. The person in charge of putting the schedule together is Melissa Acres. Acres told me on at least one occasion that she could not understand my language. 7. Acres would limit the hours I was scheduled even when hours were available. 8. I complained to my supervisor Melinda Noel about Acres' behavior toward me. Noel took no action. 			

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

[Signature]
 3/28/18 Date Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

[Signature] Aug 20, 2020
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

[Signature]
 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

March 28, 2018

Victoria Ocho
 Notary Public, State of New Hampshire
 My Commission Expires Aug. 2020

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☒ FEPA

EDCRNO(R) 0158-18

☒ EEOC**16D-2018-00185****New Hampshire Commission for Human Rights**

and EEOC

State or local Agency, if any

9. I requested to be moved to per diem status in February 2016 to allow me to go back to school.
10. At some point, I decided I would not be able to go back to school. I requested to be reinstated as full-time.
11. There were full-time LPN positions available.
12. I was told I had to interview for the additional hours and to be reinstated as full-time. My white colleagues who likewise requested to be moved from per diem status to full-time status were not required to interview.
13. After the interview, I was told someone else was chosen to take the full-time hours. The person chosen was white.
14. There were other full-time LPN positions available for which I was not considered.
15. I was instructed to stay a per diem LPN.
16. Acres was charged with scheduling and limited my hours. Acres and the Birches alleged there were no per diem hours or hours in general for me. However, the Birches have LPN positions posted and other white per diem LPNs were receiving hours.
17. On March 25, 2017, I was injured at work. My injury caused a disabling condition.
18. My doctor ordered me to have a light duty job temporarily.
19. The Birches told me there were no light duty jobs; however, it accommodated other white staff needing light duty jobs.
20. Although I am still considered per diem at the Birches, I am not being scheduled.
21. I believe I was treated differently and not scheduled for hours because of my race, color and national origin.
22. My employer's failure to provide a reasonable accommodation is retaliation for my having engaged in the protected activity of requesting accommodations.
23. I have and continue to suffer damages, including but not limited to lost wages, lost earning capacity, lost employment benefits, emotional distress, humiliation, inconvenience, and loss of enjoyment of life. I seek all damages to which I am entitled.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

9/28/18 

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

 aug 20, 2020

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT


SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

March 28, 2018

Victoria Orsini
Notary Public, State of New Hampshire
My Commission Expires August 2020

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Immaculee Muhizi,

Plaintiff

v.

Civil Case No. 1:21-CV-_____

B-X Concord, LLC

d/b/a

The Birches at Concord,

Defendant.

NOTICE OF FILING OF NOTICE OF REMOVAL TO *PRO SE* PLAINTIFF

TO: Immaculee Muhizi
15 Hillcrest Rd.
Goffstown, NH 03045

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§1441 and 1446, Defendant, B-X CONCORD, LLC d/b/a THE BIRCHES AT CONCORD, by and through its attorneys, JACKSON LEWIS P.C., have this day filed in the Clerk's Office of the United States District Court for the District of New Hampshire, Concord, New Hampshire, a Notice of Removal of this case, as shown by copy attached, and in accordance with the above statute, the State Court proceedings should proceed no further herein, unless and until the case is remanded.

Respectfully Submitted,
B-X CONCORD, LLC d/b/a
THE BIRCHES AT CONCORD,
By its attorneys,
JACKSON LEWIS P.C.,

Date: November 15, 2021

By: /s/ Martha Van Oot
Martha Van Oot, NHBA #963
100 International Drive, Suite 363
Portsmouth, NH 03801
603.559.2700
Martha.vanoot@jacksonlewis.com

MERRIMACK, SS. THE STATE OF NEW HAMPSHIRE SUPERIOR COURT

Immaculee Muhizi
15 Hillcrest Road
Goffstown, NH 03045

v.

B-X Concord, LLC d/b/a The Birches at Concord
300 Pleasant Street
Concord, NH 03301

NOTICE OF FILING OF NOTICE OF REMOVAL

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Respectfully Submitted,
B-X CONCORD, LLC d/b/a
THE BIRCHES AT CONCORD,
By its attorneys,
JACKSON LEWIS P.C.,

Date: November 15, 2021

By: /s/ Martha Van Oot
Martha Van Oot, NHBA #963
100 International Drive, Suite 363
Portsmouth, NH 03801
603.559.2700
Martha.vanoot@jacksonlewis.com

Certificate of Service

I hereby certify that copies of the foregoing were this day served, via email and the court's electronic filing system, on *pro se* Plaintiff, Immaculee Muhizi, immaculeemu2004@yahoo.com.

Date: November 15, 2021

/s/ Martha Van Oot

Martha Van Oot

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Immaculee Muhizi

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Plaintiff is pro se. 15 Hillcrest Road, Goffstown, NH 03045
immaculeemu2004@yahoo.com

DEFENDANTS

B/X Concord, LLC d/b/a The Birches at Concord

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Martha Van Oot and Sam Martin, Jackson Lewis, P.C., 100
International Drive, Ste. 363, Portsmouth, NH 03801; 603.559.2700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title VII; 42 USC Section 2000(e); ADA 42 USC Section 12101, et seq.

Brief description of cause:

plaintiff is alleging discrimination and retaliation on the basis of race, color, and national origin

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/15/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/Martha Van Oot

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.



EXHIBIT 1

EEOC Form 5 (11/09)

<p>CHARGE OF DISCRIMINATION</p> <p>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>		<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input checked="" type="checkbox"/> FEPA EDCRNO(R) 0158-18</p> <p><input checked="" type="checkbox"/> EEOC 16D-2018-00185</p>					
<p>New Hampshire Commission for Human Rights and EEOC</p> <p><i>State or local Agency, if any</i></p>							
<p>Name (indicate Mr., Ms., Mrs.)</p> <p>Immaculee Muhizi</p>		<p>Home Phone (Incl. Area Code)</p> <p>(603) 384-1858</p>					
<p>Street Address</p> <p>15 Hillcrest Road, Goffstown, NH 03045</p>		<p>City, State and ZIP Code</p>					
<p>RECEIVED</p> <p>MAR 28 2018</p>							
<p>Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)</p>							
<p>Name</p> <p>B-X CONCORD, LLC D/B/A THE BIRCHES AT CONCORD</p>		<p>No. Employees, Members</p> <p>15 - 100</p>					
<p>Street Address</p> <p>300 Pleasant Street, Concord, NH 03301</p>		<p>City, State and ZIP Code</p>					
<p>Name</p> <p>B-X Concord, LLC</p>		<p>No. Employees, Members</p> <p>500 or More</p>					
<p>Street Address</p> <p>4500 Dorr Street, Toledo, OH 43615</p>		<p>City, State and ZIP Code</p>					
<p>DISCRIMINATION BASED ON (Check appropriate box(es).)</p> <p><input checked="" type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN</p> <p><input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION</p> <p><input checked="" type="checkbox"/> OTHER (Specify) RSA 354-A</p>		<p>DATE(S) DISCRIMINATION TOOK PLACE</p> <table style="width: 100%;"> <tr> <td style="text-align: center;">Earliest</td> <td style="text-align: center;">Latest</td> </tr> <tr> <td style="text-align: center;">02-01-2016</td> <td style="text-align: center;">03-15-2018</td> </tr> </table> <p><input checked="" type="checkbox"/> CONTINUING ACTION</p>		Earliest	Latest	02-01-2016	03-15-2018
Earliest	Latest						
02-01-2016	03-15-2018						
<p>THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):</p> <ol style="list-style-type: none"> 1. I identify as African-American. My national origin is Rwandan. I speak English with an accent. 2. I was hired by B-X Concord, LLC d/b/a The Birches Concord in February 2015 as a full-time LPN. 3. I performed my job adequately. 4. During my time at the Birches, I was treated differently due to my race and national origin. 5. I received a lower hourly rate than other white LPNs, who have similar education and experiential backgrounds. 6. The person in charge of putting the schedule together is Melissa Acres. Acres told me on at least one occasion that she could not understand my language. 7. Acres would limit the hours I was scheduled even when hours were available. 8. I complained to my supervisor Melinda Noel about Acres' behavior toward me. Noel took no action. 							

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Date 3/28/18 Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

March 28, 2018

Victoria Ochoa
 Notary Public, State of New Hampshire
 My Commission Expires Aug. 2020

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

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Charge Presented To: Agency(ies) Charge No(s):

☒ FEPA

EDCRNO(R) 0158-18

☒ EEOC**16D-2018-00185****New Hampshire Commission for Human Rights**

and EEOC

State or local Agency, if any

9. I requested to be moved to per diem status in February 2016 to allow me to go back to school.
10. At some point, I decided I would not be able to go back to school. I requested to be reinstated as full-time.
11. There were full-time LPN positions available.
12. I was told I had to interview for the additional hours and to be reinstated as full-time. My white colleagues who likewise requested to be moved from per diem status to full-time status were not required to interview.
13. After the interview, I was told someone else was chosen to take the full-time hours. The person chosen was white.
14. There were other full-time LPN positions available for which I was not considered.
15. I was instructed to stay a per diem LPN.
16. Acres was charged with scheduling and limited my hours. Acres and the Birches alleged there were no per diem hours or hours in general for me. However, the Birches have LPN positions posted and other white per diem LPNs were receiving hours.
17. On March 25, 2017, I was injured at work. My injury caused a disabling condition.
18. My doctor ordered me to have a light duty job temporarily.
19. The Birches told me there were no light duty jobs; however, it accommodated other white staff needing light duty jobs.
20. Although I am still considered per diem at the Birches, I am not being scheduled.
21. I believe I was treated differently and not scheduled for hours because of my race, color and national origin.
22. My employer's failure to provide a reasonable accommodation is retaliation for my having engaged in the protected activity of requesting accommodations.
23. I have and continue to suffer damages, including but not limited to lost wages, lost earning capacity, lost employment benefits, emotional distress, humiliation, inconvenience, and loss of enjoyment of life. I seek all damages to which I am entitled.

**True Copy Attest***Catherine J. Ruffle*

Catherine J. Ruffle, Clerk of Court

November 15, 2021

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

9/28/18 *[Signature]*

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

[Signature] *aug 20, 2020*
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

[Signature]
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

March 28, 2018

Victoria Orsillo
Notary Public, State of New Hampshire
My Commission Expires August 2020

MERRIMACK, SS. THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT
217-2021-CV-00627

Immaculee Muhizi
15 Hillcrest Road
Goffstown, NH 03045

v.

B-X Concord, LLC d/b/a The Birches at Concord
300 Pleasant Street
Concord, NH 03301

**NOTICE OF REMOVAL FROM THE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS
AND REQUEST FOR JURY TRIAL PURSUANT TO NH RSA 354-A:21-A**

Defendant, B-X CONCORD, LLC d/b/a THE BIRCHES AT CONCORD, by and through its attorneys, JACKSON LEWIS P.C., hereby gives notice of its intent to remove Plaintiff's Charge of Discrimination to the Merrimack County Superior Court pursuant to the provisions of NH RSA 354-A:21-a, for the following reasons:

1. On or about, March 28, 2018, Immaculee Muhizi dual-filed a Charge of Discrimination with the New Hampshire Commission for Human Rights ("NHCHR") (Charge No. EDCRNO(R) 0158-18) and the Equal Employment Opportunity Commission ("EEOC") (Charge No. 16D-2018-00185) against B-X Concord, LLC d/b/a The Birches at Concord. A copy of Plaintiff's Charge of Discrimination is appended hereto as Exhibit 1.

2. By letter sent by email to Defendant on October 7, 2021, the NHCHR issued a finding of probable cause and scheduled a public hearing to be held on January 19, 2022, under the authority of NH RSA 354-A:21, on the following issues:



True Copy Attest

Catherine J. Ruffle

Catherine J. Ruffle, Clerk of Court

November 16, 2021

- a) Whether Complainant was subjected to race discrimination in violation of NH RSA 354-A, et seq.?
 - b) Whether Complainant was subjected to color discrimination in violation of NH RSA 354-A?
 - c) Whether Complainant was subjected to national origin discrimination in violation of NH RSA 354-A, et seq.?
 - d) Whether Complainant was subjected to retaliation by Respondent in violation of NH RSA 354-A, et seq.?
3. Defendant denies Plaintiff's claims in their entirety.
4. Defendant wishes to exercise its right to a jury trial in this Court pursuant to the provisions of NH RSA 354-A:21.
5. A copy of this Notice has been provided to Plaintiff and to the New Hampshire Commission for Human Rights.

Respectfully Submitted,
B-X CONCORD, LLC d/b/a
THE BIRCHES AT CONCORD,
By its attorneys,
JACKSON LEWIS P.C.,

Date: November 5, 2021

By: /s/ Martha Van Oot
Martha Van Oot, NHBA #963
100 International Drive, Suite 363
Portsmouth, NH 03801
603.559.2700
Martha.vanoot@jacksonlewis.com

Certificate of Service

I hereby certify that copies of the foregoing were this day served via email and first-class mail on:

Immaculee Muhizi, *pro se*
15 Hillcrest Road
Goffstown, NH 03045
Immaculeemu2004@yahoo.com

Sarah E. Burke Cohen, Esq.
Assistant Director
N.H. Commission for Human Rights
2 Industrial Park Drive
Concord, NH 03301
Sarah.E.Burkecohen@hrc.nh.gov

Date: November 5, 2021

/s/ Martha Van Oot

Martha Van Oot

EXHIBIT 1

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: Agency(ies) Charge No(s): <input checked="" type="checkbox"/> FEPA EDCRNO(R) 0158-18 <input checked="" type="checkbox"/> EEOC 16D-2018-00185	
New Hampshire Commission for Human Rights and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) Immaculee Muhizi		Home Phone (Incl. Area Code) (603) 384-1858	Date of Birth
Street Address 15 Hillcrest Road, Goffstown, NH 03045		City, State and ZIP Code <div style="text-align: right; font-weight: bold; font-size: 1.2em;">RECEIVED</div> <div style="text-align: right; font-weight: bold; font-size: 1.2em;">MAR 28 2018</div>	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.) <div style="text-align: right; font-weight: bold; font-size: 1.2em;">NH COMMISSION FOR HUMAN RIGHTS</div>			
Name B-X CONCORD, LLC D/B/A THE BIRCHES AT CONCORD		No. Employees, Members 15 - 100	Phone No. (Include Area Code) (603) 224-9111
Street Address 300 Pleasant Street, Concord, NH 03301		City, State and ZIP Code	
Name B-X Concord, LLC		No. Employees, Members 500 or More	Phone No. (Include Area Code)
Street Address 4500 Dorr Street, Toledo, OH 43615		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap;"> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> GENETIC INFORMATION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> OTHER (Specify) RSA 354-A</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 02-01-2016 03-15-2018 <input checked="" type="checkbox"/> CONTINUING ACTION	
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I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements <div style="text-align: center;"> Aug 20, 2020 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) March 28, 2018 </div>	
<div style="display: flex; align-items: center;"> <div style="text-align: center; margin-right: 20px;"> 5/28/18 Date </div> <div style="text-align: center;"> Charging Party Signature </div> </div>		<div style="border: 1px solid black; padding: 5px; text-align: center;"> Victoria Ocho Notary Public, State of New Hampshire My Commission Expires Aug. 2020 </div>	

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

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9/28/18 

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

 aug 20, 2020

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SIGNATURE OF COMPLAINANT


SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

March 28, 2018

Victoria Orsini
Notary Public, State of New Hampshire
My Commission Expires August 2020